

**IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN, JAIPUR BENCH,
JAIPUR.**

**D. B. CRIMINAL JAIL APPEAL NO.605/2002
(Kailash Vs. State of Rajasthan)**

Date of Judgment: 2nd July, 2007.

**Hon'ble Mr. Justice Shiv Kumar Sharma
Hon'ble Mr. Justice R. S. Chauhan**

**Mr. Anoop Dhand, Amicus Curiae, for the Appellant.
Mr. B.K. Sharma, PP for the State.**

(Per R.S. Chauhan J.):

REPORTABLE

This appeal arises out of the judgment dated 8.3.2002 passed by the Addl. Sessions Judge (Fast Track), Tonk whereby the trial court has convicted the accused appellant for offences under Sections 452, 323 and 302 of Indian Penal Code ('IPC' for short). The appellant has been sentenced to one year of simple imprisonment and has been fined Rs. 200/- and in default thereof to further undergo seven days of simple imprisonment for the offence under Section 452 IPC; for the offence under Section 323 IPC, he has been sentenced to six months of simple imprisonment and has been fined Rs. 100/- and to further undergo a simple imprisonment of five days in default thereof; for offence under Section 302 the appellant has been sentenced to life imprisonment and has been imposed with a fine of Rs. 2,000/- and to further undergo a simple imprisonment of six months in default thereof. Aggrieved by the said judgment, the

appellant is before us.

According to the prosecution, on 4.3.2001 one Surajmal (P.W.3) lodged a written report (Ex. P.9) at the Police Station Kotwali, Tonk wherein he claimed that in the evening around 7.00 O' Clock his uncle, Kailash (the appellant before us) alongwith one Mukesh, came to his house. His father was in the house. As soon as the appellant entered the house, he attacked his father with a sword. The appellant was accompanied by one Mukesh who was armed with a 'Gandasi'. Both the persons assaulted his father. At that time he, alongwith his mother, was in the Jungle. His sister, Gaduli (P.W.11), who was at home tried to save their father. Consequently, both these persons also assaulted her. His other sister, Dholi (P.W.7), also came into the house. As soon as he was informed, he rushed back home where he found his father in an unconscious state. His father had suffered many injuries on the head, on the right eye and on the left hand. His sister Gaduli had also suffered injuries on her hand. His father was bleeding. He took his father to the hospital, but the doctors there referred him to Jaipur. On the basis of this written report an un-numbered report was registered for offence under Section 452, 323 and 307/34 IPC. The said report was subsequently sent to the Police Station Banetha where the said report was registered as a formal FIR, FIR No. 27/2001 and the investigation commenced. With the death of the complainant's father, Ramvilas, the offence under

Section 302 IPC was added. After filing of the charge-sheet, the appellant was charged with offences under Sections 452, 323 and 302 IPC.

In order to support its case, the prosecution examined 21 witnesses and submitted 22 documents. Although the appellant did not examine any witness in defence, he did submit seven documents. After going through the oral and documentary evidence, the learned Judge convicted and sentenced the appellant as aforementioned.

Mr. Anoop Dhand, the learned Amicus Curiae, has raised a plethora of contentions before us : firstly the prosecution has not come with clean hands, for the injuries sustained by the accused have not been explained by the prosecution witnesses. Since the prosecution witness have not explained the injuries sustained by the appellant, their testimony becomes doubtful. Although, the appellant had gone to the house of the deceased, but he had gone there to complain to the deceased about the indecent behaviour of his daughters. When he told the deceased about their indecent behaviour, the deceased assaulted the appellant. During the scuffle, the deceased fell on sharp-edged stone and sustained injuries. Secondly, the prosecution has examined only interested witnesses namely, the three daughters of the deceased Kumari Seema (P.W.6)

Dholi (P.W.7) and Gaduli (P.W.11). However, their ocular testimony is contradicted by the medical evidence, namely the injury report (Ex. P.17) and the Post-Mortem Report (Ex. P.20). According to the three witnesses names above, the appellant had attacked the deceased with sharp edged weapons, yet according to the injury report, the deceased had sustained four injuries all of which were caused by blunt weapons. Therefore, the interested witnesses are unreliable. Lastly, there are glaring contradictions between the witnesses which has been ignored by the learned Judge.

On the other hand Mr. B.K. Sharma, the learned Public Prosecutor, has supported the impugned judgment.

We have heard the learned counsels, have perused the record and have examined the impugned judgment.

We are afraid that the contentions raised by the learned counsel for the appellant are without merit. A bare perusal of injury report of the appellant (Ex. P.7) clearly reveals that he had sustained merely two abrasions and has complained of pain in the left fore-arm. Hence, the injuries claimed by him to be the result of the assault by the deceased are too superficial to be explained by the prosecution witnesses. In catena of cases the Hon'ble the Supreme Court has clearly held that in case the minor injuries sustained by the accused are not explained by the prosecution witnesses, such a

non-explanation is not fatal to the prosecution case. Moreover, the learned trial court has correctly appreciated the fact that while the incident occurred on 4.3.2001, the appellant's injury report was not recorded till 10.3.2001, i.e. after a delay of six days. The learned trial court has correctly held that such a delay has not been explained by the accused in his statement under Section 313 of the Cr.P.C. Thus, a distinct possibility that these two injuries might have been caused after the alleged crime cannot be ruled out. Hence, the first contention raised by the learned counsel is unacceptable.

It is, indeed, a settled principle of criminal jurisprudence that the testimony of the interested witnesses cannot be thrown out of the window merely on the ground that they happen to be related to the victim. The courts are required to see if the presence of such a witness is natural, if the testimony of such witnesses has a ring of truth, and if the testimony is corroborated by other evidence. In the present case, three witnesses who happen to be daughters of the deceased have been produced by the prosecution namely P.W. 6 Kumari Seema, P.W. 7 Kumari Dholi and P.W. 11 Kumari Gaduli. In order to prove its case the prosecution has examined five eye-witnesses including the three daughters as stated above. Therefore, the contention raised by the learned counsel that only interested witnesses have been produced to support the prosecution case is without force. PW 17 Gaduli tells us that on 7.00 O' Clock in the

evening she was kneading flour at her home when her uncle, the appellant, came into the house. He came and slapped her. He also hit his sister Dholi. When their father protested, the appellant hit her father with a 'Gandasi' on the head and on his hand. Mukesh hit the girls with a stick. Because of the injuries sustained by her father, he collapsed. When their mother came back from the jungle, they told her about the incident. Her sister Dholi went to inform her brother (Suraj) the complainant. He came back home and took her father in a tractor to the Tonk Hospital. The doctors at the hospital referred him to Jaipur. Subsequently, her father expired. Similar statement has also been given by Dholi (P.W.7). Neither of these two witnesses have been demolished in their cross-examination. P.W. 6 Seema, another daughter of the deceased, also corroborates the statement of P.W.7 Dholi and P.W. 11 Gaduli. Although these three witnesses are related, but their testimony cannot be thrown out only on the ground that they are related to the deceased. It is but natural for the daughters of the family to be within and around the house in the evening. The evening meal had to be cooked. It was but natural for one of the daughters to be kneading the flour around 7.00 O' Clock in the evening. Similarly Kumari Dholi (P.W. 7) had gone out to fetch water from near the house. Therefore, their presence is absolutely natural at the scene of the crime. Moreover, the fact that Kumari Dholi was injured and her injury report (Ex. P.11) proves her

presence at the place of occurrence.

Much has been made about the contradiction between the ocular and the medical evidence. According to the three eye-witnesses named above the appellant had used a 'Gandasi' a sharp edged weapon to assault the deceased. However, according to the injury report (Ex. P.17) and the Post-Mortem Report (Ex. P.20) the deceased had sustained injuries by blunt weapon. In a catena of cases the Hon'ble Supreme Court has held that where the testimony of the witnesses is natural and trustworthy, their testimony should be accepted notwithstanding the fact that their testimony is contrary to the medical evidence. In the present case the fact remains that all the three daughters are children who have witnessed the killing of their father. Therefore, the possibility that under the trauma of seeing their father killed, they could not distinguish as to which side of 'Gandasi' was used, cannot be ruled out. However, the fact remains that according to these three witnesses the appellant had entered the house carrying a lethal weapon and had assaulted the deceased. Due to the injuries caused by the appellant the deceased had expired. Thus, the appellant had caused the death of the deceased.

Lastly, because there are minor contradictions in the testimonies of the witnesses it would not cast a doubt about the

veracity of their testimony. After all, the three eye-witnesses are illiterate village girls who may not remember the details of the incident in the same exact manner. Moreover their perception may be varied, for in its very nature, each individual gives his own version of the incident. Therefore, minor differences and contradictions are but natural in the testimonies of the witnesses.

For these reasons we find no merit in the instant appeal and the same accordingly stands dismissed. Conviction and sentence awarded to appellant under sections 452, 323 and 302 IPC are maintained.

(R.S. CHAUHAN) J.

(SHIV KUMAR SHARMA) J.

MRG.